

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TIMOTHY N. TOWNSEND,

Plaintiff,

vs.

No. CIV-09-0743 WJ/LAM

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

**ORDER GRANTING EAJA FEES**

**THIS MATTER** is before the Court on Plaintiff's *Motion for Approval of Attorney Fees Under the Equal Access to Justice Act* (hereinafter, "*Motion*") (*Doc. 22*). The Court has considered the *Motion* (*Doc. 22*), the summary of attorney time and expenses (*Doc. 22-1*), Defendant's *Response to Plaintiff's Motion for Approval of Attorney Fees Under the Equal Access to Justice Act* (*Doc. 25*), and the relevant law. Defendant has no objection, and despite a technical flaw,<sup>1</sup> the Court will **GRANT** the *Motion*.

**IT IS THEREFORE HEREBY ORDERED** that Plaintiff's *Motion* (*Doc. 22*) is **GRANTED**, and Plaintiff Timothy Townsend is authorized to receive **\$2,584.00** for payment to his attorney for services before this Court, in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1249–55 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, he shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees

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<sup>1</sup> Plaintiff's *Motion* was filed on April 27, 2010 (*Doc. 22*), but the *Order of Remand* (*Doc. 23*) was not entered until May 13, 2010. The *Motion*, therefore, was technically not ripe when filed. Nevertheless, to preserve judicial economy, the Court will consider the *Motion* at this time.

payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must "refun[d] to the claimant the amount of the smaller fee." (citation omitted)).

**IT IS SO ORDERED.**

  
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**THE HONORABLE LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**